



Signed and Filed: October 30, 2020

Lewis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re)
PETER R. FADER,) Bankruptcy Case No. 08-30119
Debtor.) Chapter 7

E. LYNN SCHOENMANN, TRUSTEE) Adversary Case No. 20-03007
Plaintiff,)
v.)
STEVEN R. BOAL and QUOTIENT)
TECHNOLOGY, INC.,)
Defendants.)

MEMORANDUM DECISION REGARDING MOTIONS TO DISMISS

On September 4, 2020, this court held a hearing on the motions to dismiss this adversary proceeding filed by defendants Steven R. Boal ("Boal") (dkt. 28) and by Quotient Technology, Inc. ("Quotient") (dkt. 56) (collectively, "Defendants"). For the reasons set forth below, the court is denying Boal's motion to dismiss but granting Quotient's motion to dismiss.

1 **I. PROCEDURAL BACKGROUND**

2 On January 26, 2008, debtor Peter R. Fader ("Debtor") filed
3 the underlying chapter 7 case (Case No. 08-30119). Debtor
4 received his discharge in July 2009, and the case was closed in
5 2010. On July 24, 2019, Debtor filed a motion to reopen the
6 case so that a chapter 7 trustee could determine whether the
7 estate could or should pursue certain claims against Boal and
8 Quotient. The court granted the motion and appointed plaintiff
9 E. Lynn Schoenmann ("Trustee") as the chapter 7 trustee.

10 On December 10, 2019, Trustee filed the underlying
11 complaint against the Defendants in state court, and Boal
12 removed the action to the U.S. District Court for the Northern
13 District of California ("District Court"). Following a referral
14 of the action to this court by the District Court, Boal filed a
15 motion to withdraw the reference under 28 U.S.C. § 157(d), which
16 the District Court denied.

17 On January 30, 2020, Boal filed his motion to dismiss
18 Trustee's Complaint (the "Boal MTD") (dkt. 28). Quotient then
19 filed its own motion to dismiss (dkt. 56) (the "Quotient MTD"),
20 which Boal joined on the same day (dkt. 60). On August 3, 2020,
21 Trustee filed her oppositions to both motions to dismiss; both
22 Quotient (dkt. 65) and Boal (dkt. 66) filed their replies on
23 August 4, 2020. Following a telephonic hearing on September 4,
24 2020, the court took both the Boal MTD and the Quotient MTD
25 under submission.

26 **II. ALLEGATIONS AND CLAIMS ASSERTED BY TRUSTEE**

27 Trustee's complaint alleges that in exchange for Debtor's
28 assistance in raising critical capital for two companies, Boal

1 promised that he would pay Debtor a share of his profits.
2 "Specifically, Boal agreed that [Debtor] would receive 30% of
3 the stock issued to Boal in [Quotient] and 50% of the stock
4 issued to Boal in CashStar, Inc. ("CashStar")." Complaint at ¶
5 1. Both payments were to occur after Boal liquidated his
6 shares. *Id.*

7 Trustee further alleges that Debtor raised critical capital
8 for both Quotient and CashStar, including over \$40 million for
9 Quotient between 1999 and 2006, "money that was critical to the
10 company's early survival and later success[.]" Complaint at
11 ¶¶ 2 and 18. Trustee asserts that Boal and Debtor formed their
12 first joint venture in 1998 and "had always operated on a
13 'handshake basis.'" Complaint at ¶ 16.

14 In the following paragraph, Trustee alleges that Boal
15 committed "on behalf of himself and Quotient" to give Debtor 25
16 to 30% of Boal's equity in Quotient. "Boal wanted to maintain
17 control, so the two agreed that the equity representing
18 [Debtor's] promised return would be issued to Boal who would
19 hold it in trust" and would pay Debtor his share of the proceeds
20 upon a sale of the equity. Complaint at ¶ 17.

21 In her first cause of action, Trustee alleges breach of the
22 "Quotient Contract." In paragraph 31, she alleges that Boal,
23 acting on behalf of himself and Quotient, entered into an oral
24 contract with Debtor. Complaint at ¶ 31. Trustee states that
25 Boal agreed that Quotient would issue shares to Boal on Debtor's
26 behalf, who would hold the stock for long as he deemed
27 appropriate and then pay Debtor 30% of the sale of the stock.
28

1 "In short, the parties agreed that as Boal liquidated shares of
2 Quotient stock issued to him, he would pay 30% of the proceeds
3 to [Debtor]." *Id.* "Quotient and Boal breached the Quotient
4 Contract by paying [Debtor] only \$600,000 (in the form of two
5 promissory notes Boal promised to forgive) rather than the full
6 amount due, which on information and belief exceeds \$10
7 million." *Id.* at ¶ 35.

8 In the second cause of action, Trustee asserts a claim
9 against Boal and Quotient for breach of fiduciary duties arising
10 out of "a joint venture or a relationship akin to a joint
11 venture[.]" In the third cause of action, Trustee asserts
12 claims against Boal for the purported breach of the CashStar
13 contract. In the fourth cause of action, Trustee asserts that
14 Boal breached his fiduciary duties to Debtor arising from the
15 "CashStar Joint Venture." In the fifth, sixth and seventh
16 causes of action, Trustee seeks the imposition of a constructive
17 trustee against Boal and Quotient, declaratory relief and an
18 accounting.

19 **III. THE MOTIONS TO DISMISS**

20 The Boal MTD seeks dismissal of the complaint on four
21 grounds. First, Boal contends that Debtor's failure to schedule
22 the potential claims against him in the underlying bankruptcy
23 case judicially estops the estate (and Debtor, as the primary
24 beneficiary of potential proceeds of this lawsuit) from
25 asserting or benefitting from these claims. Second, Boal
26 contends that the breach of oral contract claims are time-barred
27 under California law. Third, Boal argues that even if judicial
28 estoppel does not apply, the complaint fails to state a claim

1 for breach of fiduciary duty upon which relief can be granted.
2 Fourth, Boal argues that the remaining claims are wholly
3 derivative of the time-barred breach of contract claims and thus
4 do not assert claims upon which relief can be granted.

5 The Quotient MTD contends that the terms of the purported
6 contract are too vague to be enforceable. Second, Quotient
7 observes that Trustee has not alleged that Quotient (as opposed
8 to Boal) breached the purported oral contract. Third, Quotient
9 contends that the breach of contract claims are time-barred
10 under California law. Fourth, Quotient contends that Trustee's
11 breach of fiduciary duty claims are not cognizable as Debtor and
12 Quotient never entered into a partnership or joint venture.
13 Fifth, like Boal, Quotient argues that the remaining causes of
14 action fail to state a claim under California law or are wholly
15 derivative of other claims that must be dismissed. Finally,
16 Quotient contends that the doctrine of judicial estoppel
17 precludes Debtor (and, by extension, Trustee) from asserting or
18 benefitting from the claims pled by the Trustee.

19 **IV. STANDARDS FOR DISMISSAL OF COMPLAINTS**

20 A motion to dismiss pursuant to Federal Rule of Civil
21 Procedure 12(b)(6) (made applicable by Federal Rule of
22 Bankruptcy Procedure 7012) is a challenge to the sufficiency of
23 the allegations set forth in the complaint. To survive a Rule
24 12(b)(6) motion to dismiss, a plaintiff must allege "enough
25 facts to state a claim to relief that is plausible on its face."
26 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim
27 has facial plausibility when the Plaintiff pleads factual
28 content that allows the court to draw the reasonable inference

1 that the defendant is liable for the misconduct alleged."

2 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility
3 standard is not akin to a 'probability requirement,' but it asks
4 for more than a sheer possibility that a defendant has acted
5 unlawfully." *Id.* (quoting *Twombly*) "While a complaint attacked
6 by a Rule 12(b)(6) motion to dismiss does not need detailed
7 factual allegations, a plaintiff's obligation to provide the
8 'grounds' of his 'entitlement to relief' requires more than
9 labels and conclusions." *Twombly*, 550 U.S. at 555.

10 **V. DISCUSSION**

11 A. BOAL'S MTD

12 1. *Judicial Estoppel*

13 Boal argues that the doctrine of judicial estoppel
14 precludes this adversary proceeding, particularly as Debtor is
15 the primary beneficiary of any judgment. When Debtor filed this
16 case in 2008, he admittedly did not schedule the purported oral
17 contract with Boal on his schedules. See ¶¶ 4-7 of Debtor's Ex
18 Parte Motion to Reopen Chapter 7 Case (dkt. 41 in Case No. 08-
19 30119). He did not disclose that pursuant to this oral
20 contract, he would allegedly receive 25 to 30 percent of the
21 equity in Quotient, as well as stock in CashStar. *Id.*; see also
22 ¶¶ 16-19 of the Complaint (dkt. 1-3).

23 After the court reopened the case, Trustee filed a motion
24 to approve the litigation recovery agreement with Debtor (dkt.
25 55 in Case No. 08-30119). Boal objected (dkt. 62 in Case No.
26 08-30119), contending that the litigation sharing agreement was
27 inequitable and designed to evade the doctrine of judicial
28 estoppel. Overruling Boal's objections, the court entered an

1 order approving the litigation recovery agreement (dkt. 72) and
2 will not revisit that holding in the context of the two motions
3 to dismiss.

4 *2. Statute of Limitations*

5 Under California law, the statute of limitations based on a
6 breach of oral contract is two years. Cal. Civ Proc. Code
7 § 339(1). Boal contends that any breach of the purported
8 Quotient agreement accrued in 2014 when the company went public
9 and Boal sold some of his Quotient shares, although he
10 acknowledges that he continued to sell Quotient shares through
11 2016. See Boal MTD at dkt. 28, ECF pgs. 17-18. Similarly, Boal
12 contends that the statute of limitations bars Trustee's claims
13 regarding the CashStar stock, as the Complaint alleges that Boal
14 sold his CashStar stock in 2017, but gave Debtor only a "small
15 fraction" of the earnings to which he was entitled.

16 In response to Boal's contention that her claims are time-
17 barred, Trustee asserts that Debtor and Boal orally agreed to
18 extend the payment dates to December 2018, thus equitably
19 estopping Boal's invocation of the statute of limitations. This
20 defense presents an issue of fact that cannot be resolved in the
21 context of a motion to dismiss.

22 Under California law, a party may be equitably estopped
23 from asserting the statute of limitations when his or her
24 conduct induced another not to file a lawsuit within the
25 applicable limitations period. *Walker v. City of San Clemente*,
26 239 Cal.App.4th 1350, 1370 (2015); see also *Atwater Elementary*
27 *School Dist. v. California Dept. of General Services*, 41 Cal.4th
28 227, 232-233 (2007) ("[w]here the delay in commencing action is

1 induced by the conduct of the defendant it cannot be availed of
2 by him as a defense"). As stated by the court in *Battuello v.*
3 *Battuello*, 64 Cal.App.4th 842 at 844, 848 (1998) (emphasis
4 added):

5 While section 366.2 clearly states that the one-year
6 statute of limitations set forth therein may not be
7 "tolled" or "extended," it says nothing about
8 equitable estoppel. The doctrines are distinct. As
9 one court noted in a similar context, "Tolling,
10 strictly speaking, is concerned with the point at
11 which the limitations period begins to run and with
12 the circumstances in which the running of the
13 limitations period may be suspended. These are
14 matters in large measure governed by ** the language
15 of the statute of limitations itself.... Equitable
16 estoppel, however, is a different matter. It is not
17 concerned with the running and suspension of the
18 limitations period, but rather comes into play only
19 after the limitations period has run and addresses
20 itself to the circumstances in which a party will be
21 estopped from asserting the statute of limitations
22 as a defense to an admittedly untimely action
23 because his conduct has induced another into
24 forbearing suit within the applicable limitations
25 period. Its application is wholly independent of the
26 limitations period itself and takes its life, not
27 from the language of the statute, but from the
28 equitable principle that no man will be permitted to
profit from his own wrongdoing in a court of
justice. Thus, because equitable estoppel operates
directly on the defendant without abrogating the
running of the limitations period as provided by
statute, it might apply no matter how unequivocally
the applicable limitations period is expressed.

24 For the reasons set forth in *Battuello*, Trustee's allegations
25 that Boal induced Debtor not to file a lawsuit before the end of
26 the applicable limitations period by making false promises upon
27 which Debtor purportedly relied preclude dismissal of the claims
28 against Boal at this juncture. *Id.*, see also *Herman v. Brown*,

1 91 Cal.App.2d 758, 761 ((1949)) ("a debtor who induces his
2 creditor to defer action, by means of promises to pay the
3 indebtedness or settle the claim, is estopped to plead the
4 statute of limitations") (internal quotations omitted). The
5 court must assume the facts alleged in the complaint are true,
6 and Trustee has alleged sufficient facts to preclude dismissal
7 of her action against Boal as time-barred.

8 3. *Breach of Fiduciary Duties and Contract*

9 Boal also asserts that Trustee's claims for breach of
10 fiduciary duty should be dismissed. The court believes that
11 dismissal is inappropriate, as Trustee has alleged that Boal and
12 Debtor entered into a joint venture and because California law
13 provides that "a joint venturer owes fiduciary duties to his
14 coventurers." *Prostar Wireless Grp., LLC v. Domino's Pizza,*
15 *Inc.*, 360 F. Supp. 3d 994, 1008 (N.D. Cal. 2018), *aff'd*, 815 F.
16 App'x 117 (9th Cir. 2020), *citing Galardi v. State Bar*, 43
17 Cal.3d 683, 691 (1987). Thus Trustee has sufficiently alleged
18 this cause of action against Boal.

19 Boal further contends that any alleged agreement
20 between Debtor, Boal and Quotient is unenforceable because it is
21 "uncertain and indefinite as to the obligations of the parties,"
22 *citing Kahn Creative Partners, Inc. v. Nth Degree, Inc.*, No. CV
23 10-932-JST FFMX, 2011 WL 1195680, at *4 (C.D. Cal. Mar. 29,
24 2011). But *Creative Partners* actually explains why dismissal is
25 premature: "Whether a partnership or joint venture exists is
26 primarily a factual question to be determined by the trier of
27 fact from the evidence and inferences to be drawn therefrom."
28 *Id.* at *6, *citing Bank of Cal. v. Connolly*, 36 Cal.App.3d 350,

1 111 Cal.Rptr. 468, 478 (Cal. Ct. App. 1973). "Although a
2 partnership ordinarily involves a continuing business, whereas a
3 joint venture is usually formed for a specific transaction or a
4 single series of transactions, the incidents of both
5 relationships are the same in all essential respects." *Connolly*,
6 111 Cal.Rptr. at 477.

7 While Trustee does not describe certain terms of the
8 purported joint ventures, this lack of detail is not necessarily
9 fatal at the pleading stage; instead, the parties should be able
10 to conduct discovery, and file motions for summary judgment if
11 appropriate (as the parties in *Kahn Creative Partners* did).
12 Nonetheless, Trustee will have to address the following material
13 questions at some point to avoid possible summary judgment:
14 When and where was the agreement between Debtor and Boal
15 reached? What were the specific terms? Was there a minimum
16 amount of capital that had to be raised? Was there a time frame
17 for performance?

18 4. *Remaining Claims*

19 Boal argues that the remaining claims are wholly derivative
20 of the purportedly time-barred claims and thus no relief can be
21 granted on them. As noted above, however, Trustee has
22 sufficiently alleged a cognizable claim for breach of contract,
23 so the remaining claims are not subject to dismissal.

24 **B. QUOTIENT'S MTD**

25 In contrast to the claims against Boal, the claims against
26 Quotient do not survive scrutiny under *Iqbal* and *Twombly*.
27 Trustee's complaint insufficiently alleges that Debtor entered
28 into an oral agreement with Quotient. The complaint is devoid

1 of factual allegations reflecting when and where Debtor reached
2 an agreement with Quotient, or any specific promises made by
3 Debtor to Quotient or by Quotient to Debtor. Quite simply, the
4 complaint does not plausibly allege any duties owed by Quotient
5 to Debtor or any resulting breaches of such duties. For this
6 reason, the court will dismiss the claims asserted against
7 Quotient. Ordinarily, the court would dismiss the claims with
8 leave to amend, but - as discussed below - any such claims are
9 time-barred.

10 According to paragraph 1 of the complaint, "Boal agreed
11 that [Debtor] would receive 30% of the stock issued to Boal in
12 [Quotient] and 50% of stock issued to Boal in CashStar, Inc."
13 Complaint at ¶ 1. Such payment was to occur after Boal
14 liquidated his shares. *Id.* Boal liquidated over 62,000 of his
15 Quotient shares in 2014 when Quotient went public, but did not
16 remit the proceeds to Debtor. Under governing California law,
17 any action for this purported breach of the oral agreement
18 between Debtor and Boal accrued at the time of the breach in
19 2014. *Zecos v. Nicholas-Applegate Capital Mgmt.*, 42 Fed. App'x
20 31, 32 (9th Cir. 2002) (citing *Cochran v. Cochran*, 56 Cal. App.
21 4th 1115, 1121 (1997)). The statute of limitations for breach
22 of an oral contract is two years pursuant to section 339(1) of
23 the California Code of Civil Procedure.

24 Therefore, under Cal. Civ. Pro. § 339(a), Debtor's claims
25 expired in 2016 and were time-barred when Trustee filed the
26 underlying complaint in 2019. As noted above in section V(A)(2)
27 above, the Trustee sufficiently alleges facts that could support
28

1 a finding that Boal is equitably estopped from asserting a
2 statute of limitations defense. In contrast, Trustee has not
3 alleged that Quotient was a party to any such agreement or
4 novation, nor has she alleged any promises made by Quotient that
5 would support equitable estoppel of its statute of limitations
6 defense. As admitted by Trustee in her consolidated opposition
7 and as stated in paragraph 32 of the Complaint, Debtor and Boal
8 "agreed to amend the Quotient Contract to allow Boal to defer
9 payment of what was due to [Debtor]. As a result of this
10 novation, the payments were not due until [Debtor's] demand for
11 them in or about December 2018." Given that Quotient was not a
12 party to this novation, the two-year statute of limitations
13 still applies as to claims against Quotient.

14 Finally, even if the claims against Quotient were not time-
15 barred, Trustee has not identified any promise made to Debtor by
16 Quotient that it has breached. As a consequence, any argument
17 that Quotient should be equitably estopped from asserting a
18 statute of limitations defense is not persuasive. For the
19 foregoing reasons, the court will dismiss the Trustee's claims
20 against Quotient without leave to amend.

21 **VI. CONCLUSION**

22 For the foregoing reasons, the court is denying the Boal
23 MTD and granting the Quotient MTD. Trustee should upload an
24 order denying the Boal MTD for the reasons set forth in this
25 memorandum decision and file a separate proof of service
26 indicating compliance with B.L.R. 9021-1(c). Similarly,
27 Quotient should upload an order granting the Quotient MTD for
28 the reasons set forth in this memorandum decision, and file a

1 separate proof of service indicating compliance with B.L.R.
2 9021-1(c).

3 The court will conduct an adversary proceeding scheduling
4 conference on December 18, 2020, at 1:30 p.m. via CourtCall.

5 **END OF MEMORANDUM DECISION**
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